

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
THE CHEMITHON CORPORATION,)
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB Nos. 197 and 402

FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

THESE MATTERS being an appeal of a \$250.00 civil penalty for a
smoke emission violation and the appeal of a \$100.00 civil penalty for a
violation of a notice of construction requirement having come on regularly
for hearing before the Pollution Control Hearings Board on November 27,
1973 at Seattle, Washington; and appellant The Chemithon Corporation
appearing through its attorney J. Richard Aramburu, and respondent,
Puget Sound Air Pollution Control Agency appearing through its attorney,
Keith D. McGoffin; and Board members present at the hearing being
Walt Woodward; and the Board having considered the sworn testimony,

1 exhibits, records and files herein and written closing arguments of
2 counsel and having entered on the 2nd day of January, 1974, its
3 proposed Findings of Fact, Conclusions and Order; and the Board having
4 served said proposed Findings, Conclusions and Order upon all parties
5 herein by certified mail, return receipt requested and twenty days
6 having elapsed from said service; and

7 The Board having received exceptions to said proposed Findings,
8 Conclusions and Order from appellant and reply to exceptions from
9 respondent and having considered same and denied appellant's exceptions;
10 and the Board being fully advised in the premises; now therefore,

11 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
12 Findings of Fact, Conclusions and Order, dated the 4th day of January,
13 1974, and incorporated by this reference herein and attached hereto as
14 Exhibit A, are adopted and hereby entered as the Board's Final Findings
15 of Fact, Conclusions and Order herein.

16 DONE at Lacey, Washington this 20th day of March, 1974.

17 POLLUTION CONTROL HEARINGS BOARD

18 Walt Woodward
19 WALT WOODWARD, Chairman

20 W. A. Gissberg
21 W. A. GISSBERG, Member

22 Mary Ellen McCaffree
23 MARY ELLEN McCAFFREE, Member

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POLLUTION CONTROL HEARINGS BOARD
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CHEMITHON CORP.,

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vs.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

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PCHB No. 402 and 197

FINDINGS OF FACT,
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These matters, by agreement of counsel, came seriatim before the Pollution Control Hearings Board (Walt Woodward, presiding officer) at formal hearings in the Washington Commerce Building, Seattle, Washington, immediately after an unsuccessful informal conference in PCHB No. 197 at 10:00 a.m., Tuesday, November 27, 1973. PCHB No. 402 is the appeal of a \$250.00 civil penalty for an alleged smoke emission violation of respondent's Regulation I; PCHB No. 197 is the appeal of a \$100.00 civil penalty for an alleged violation of a notice of construction requirement of Resolution No. 143 of respondent's Board of Directors.

Appellant appeared through J. Richard Aramburu; respondent through

1 Keith D. McGoffin. Barbara Dowd, Tacoma court reporter, reported
2 the proceedings.

3 Witnesses were sworn and testified. Exhibits were admitted.
4 Written closing arguments were submitted.

5 From testimony heard, exhibits examined, arguments considered and
6 transcript reviewed, the Pollution Control Hearings Board makes these

7 FINDINGS OF FACT

8 I.

9 Appellant, a world leader in the manufacture of detergent-making
10 equipment, operates a detergent manufacturing and research facility at
11 5430 W. Marginal Way S.W., Seattle, King County.

12 II.

13 In the research and development of a process to control drier
14 emissions, appellant and respondent agreed in 1970 to a compliance
15 schedule and, later, to certain extensions thereof. On March 8, 1972,
16 by Resolution No. 143, the Board of Directors of Puget Sound Air Pollutio
17 Control Agency, granted to appellant a variance from Sections 9.03,
18 9.04 and 9.09 of respondent's Regulation I until February 28, 1973,
19 subject to seven specified conditions. Among those conditions was that
20 appellant submit a notice of construction to respondent by June 30, 1972,
21 for the full scale, spray drier control system.

22 III.

23 Such notice of construction was not submitted by June 30, 1972.
24 Research had not been completed by that time and appellant, therefore,
25 was unable to submit the required notice. Appellant, however, did not
26 notify respondent of this difficulty. On August 14, 1972, respondent's

1 control officer sent to appellant a written reminder of the overdue
2 notice of construction.

3 IV.

4 On September 7, 1972, appellant was served by respondent with
5 Notice of Violation No. 5554, citing a violation of Resolution No. 143,
6 and on September 21, 1972, in connection therewith, respondent served
7 appellant with Notice of Civil Penalty No. 446 in the amount of \$100.00.
8 That penalty is the subject of the appeal in PCHB No. 197.

9 V.

10 Appellant was cited by respondent's staff to show cause before
11 respondent's Board of Directors why the variance granted in Resolution
12 No. 143 should not be vacated. After a continued hearing and a conference
13 between respondent's staff and appellant, respondent's Board of
14 Directors, by Resolution No. 173, on December 13, 1972, dismissed the
15 show cause order, extended Resolution No. 143 and the variance granted
16 therein as to notice of construction to January 31, 1973, and as to
17 completion to March 31, 1973.

18 VI.

19 On May 18, 1973, at 9:30 a.m., appellant's production manager, on
20 orders of appellant's president, notified respondent by telephone that
21 appellant would conduct a test on its spray tower. Two inspectors,
22 dispatched by radio to appellant's plant, recorded blue smoke visual
23 emissions of 55 to 60 percent opacity from appellant's spray drier
24 stack for 15 minutes beginning at 10:22 a.m. They served appellant
25 with Notice of Violation No. 7867, citing Section 9.03(a)(1) of
26 respondent's Regulation I. Subsequently, and in connection therewith,

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1 respondent served appellant with Notice of Civil Penalty No. 900 in
2 the sum of \$250.00. That penalty is the subject of the appeal in
3 PCHB No. 402.

4 VII.

5 Appellant contends, but did not prove, that the quashing of the
6 show cause order relieved appellant of further responsibility in
7 PCHB No. 197.

8 VIII.

9 Appellant contends, but did not prove, that Resolution No. 173
10 gives appellant the right to conduct various product emission tests
11 if, prior to the test, appellant notifies respondent that the test
12 is about to be conducted.

13 IX.

14 Section 9.03(a)(1) of respondent's Regulation I makes it unlawful
15 to cause or allow the emission for more than three minutes in any one-hou
16 period of an air contaminant whose opacity is greater than 40 percent.
17 Section 3.29 of respondent's Regulation I authorizes a civil penalty of
18 not more than \$250.00 for a violation of Regulation I. Section 7.01
19 of respondent's Regulation I authorizes respondent's Board of Directors
20 to issue variances upon application for same.

21 From these findings, the Pollution Control Hearings Board comes
22 to these

23 CONCLUSIONS

24 I.

25 Testimony in these related matters makes clear that there is and
26 has been for several years a consistent lack of rapport between this

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1 Seattle industrial firm and this governmental agency charged with
2 the major responsibility of clean air in the state's largest
3 municipality.

4 At the direction of the presiding officer, the transcript of
5 the abortive informal conference precedent to the formal hearing has
6 been preserved to show this almost complete lack of rapport. The Board,
7 making its decision in this unpleasant atmosphere, therefore first comes
8 to the overriding conclusion that sincere cooperation by both entities
9 is to be desired to avoid similar difficulties in the future.

10 II.

11 As to PCHB No. 197, two factors are apparent from the testimony:
12 (1) appellant, still uncertain as to its research, failed to file
13 the required notice of construction even after receiving a past-due
14 reminder and request to file same and (2) appellant held the mistaken,
15 but understandable, opinion that quashing of the show cause matter
16 took care of the civil penalty. The Board, therefore, finds appellant
17 in violation of Resolution No. 143 as cited in Notice of Violation
18 No. 5554. The penalty, in view of all the circumstances, now does not
19 appear to be reasonable.

20 III.

21 As to PCHB No. 402, there is nothing in the record to sustain
22 appellant's belief that either Resolution No. 143 or Resolution No. 173
23 gives him the right to conduct emission-causing tests of its facility.
24 Those resolutions provided variances, which did permit testing, but
25 only during the specified effective dates of the variances. Appellant's
26 telephone call to respondent on May 18, 1973, carried with it no permissi

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1 to conduct an emission-causing test because the closing date of the
2 last effective variance (Resolution No. 173) was March 31, 1973. The
3 Board, therefore, finds that appellant was in violation of Section 9.03(a)
4 as cited in Notice of Violation No. 7867. The penalty appears to be
5 reasonable.

6 This is not to say that respondent's Board should not grant a
7 variance which, from time to time, would permit appellant to conduct
8 research smoke-emission testing. It would appear that appellant's
9 position as a world leader in the manufacture of detergent-making
10 equipment demands that such tests be made. Respondent's Board has
11 the authority to permit such tests by variance. This Board is
12 confident that respondent's Board would give appellant a fair hearing
13 on such a variance if appellant would request same.

14 Therefore, the Pollution Control Hearings Board issues this

15 ORDER

16 Both appeals are denied. Notice of Civil Penalty No. 446 is
17 remanded to respondent for the setting of the more appropriate sum
18 of \$25.00. Notice of Civil Penalty No. 900 is sustained in the
19 amount of \$250.00.

20 DONE at Lacey, Washington, this 2nd day of January, 1974.

21 POLLUTION CONTROL HEARINGS BOARD

22 Walt Woodward
23 WALT WOODWARD, Chairman

24 W. A. Gissberg
25 W. A. GISSBERG, Member

26 Mary Ellen McCaffree
27 MARY ELLEN McCAFFREE, Member

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29 CONCLUSIONS AND ORDER